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No. 111, Original

In the Supreme Court of the United States.

October Term, 1991

STATE OF DELAWARE,
Plaintiff,
STATE OF TEXAS,
Plaintiff-Intervenor,
COMMONWEALTH OF MASSACHUSETTS,
Applicant for Intervention,

v.

STATE OF NEW YORK,
Defendant.

BRIEF OF THE COMMONWEALTH OF MASSACHUSETTS IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

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BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

On May 31, 1988, this Court granted Plaintiff State of Delaware's ("Delaware") Motion for Leave to File a Complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and

Defendant State of New York ("New York") regarding which state is entitled to claim and take possession of certain unclaimed intangible property held by securities brokerage firms incorporated in Delaware.

On February 21, 1989, the Court granted the State of Texas' motion to file a complaint in intervention. On various dates the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West

Virginia, Wisconsin, Wyoming, and the Commonwealths of Kentucky, Virginia and Pennsylvania as well as the District of Columbia have filed motions to intervene in this matter.

On January 28, 1992, the Special Master appointed by the Court, Thomas H. Jackson, Esquire, issued a report wherein he recommended that all applications for intervention filed prior to the Supreme Court's final decree be granted.

The Commonwealth of Massachusetts (hereinafter "Massachusetts"), seeks leave to intervene in this action.

JURISDICTION

The Court has accepted the original jurisdiction of this action pursuant to Article III, Section 2 of the

Constitution of the United States and under United States Code Title 28 Section 1251(a).

STATEMENT OF THE CASE

This case involves every State in the Union and will determine the ownership of potentially significant amounts of unclaimed property. Massachusetts requests leave to intervene in this action for purposes of sharing in any relief granted by this Court and asks the Court to permit it to file its proposed Complaint in Intervention.

The property at issue in this action consists of unclaimed intangible property consisting of dividends, interest and other distributions arising out of security transactions. The owner of the property at issue is unknown, and

the property itself has become abandoned. Under current practice, New York has been taking custody of abandoned dividends, interest and distributions from brokerage houses located in New York.

The parties to this action all claim the property, or a portion thereof, pursuant to the rules of priority established by this Court in Texas v. New Jersey, 379 U.S. 674 (1965), and Pennsylvania v. New York, 407 U.S. 206 (1972). However, the parties to this action differ as to their interpretation of Texas v. New Jersey and as to their characterization of the unclaimed property. The parties have advanced four different theories.

New York argues that the unclaimed dividends and distributions it has escheated are owner-known, the owner

being a brokerage house with a trading address in New York. Delaware claims that the brokerage houses holding the unclaimed distributions are the "debtors" according to Texas v. New Jersey, and, therefore, the state of incorporation of the "debtor" broker is entitled to the unclaimed revenue. The Texas theory suggests that the "debtor" in this case is the issuer of the stock or bond, and, therefore, the state of incorporation of the "debtor" issuer is entitled to the unclaimed revenue. The California theory argues that fairness and Texas v. New Jersey require that the unknown dividends and distributions be allocated among the states in proportion to the commercial activities which gave rise to the unclaimed property.

Massachusetts seeks to intervene in this action for the purposes of sharing

in any relief granted by this Court and to protect its claim to property held by New York that may eventually be returned to Massachusetts.

SUMMARY OF ARGUMENT

I. Massachusetts is entitled to intervene in this action as a matter of right pursuant to the requirements of Rule 24(a)(2) of the Federal Rules of Civil Procedure and the standards set forth in Texas v. New Jersey. Massachusetts claims the right to possession of portions of property that is the subject of this suit pursuant to any potential remedy fashioned by the Supreme Court.

II. Massachusetts claims an interest in the property that is the subject of this suit, and the

intervention of Massachusetts will not unduly delay this action or prejudice the rights of the original parties. Having satisfied the requirements for permissive intervention pursuant to Rule 24(b)(2) of the Federal Rules of Civil Procedure, Massachusetts' Motion for Leave to File Complaint in Intervention should be granted.

ARGUMENT

I. MASSACHUSETTS IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT PURSUANT TO FED. R. CIV. P. 24(a)(2).

Massachusetts has the right to intervene in this action under Rule 24(a)(2) of the Federal Rules of Civil Procedure, as incorporated by Sup. Ct. R. 17.2, because it has an interest in

the property that is the subject of this action - unclaimed intangible dividends, interest and distributions held by brokerage houses. The Commonwealth has an interest in any remedy fashioned by this Court especially insofar as it would determine Massachusetts' right to certain unclaimed intangible personal property held by the State of New York.

This Court has consistently allowed governmental bodies with an interest in property subject to conflicting claims to intervene. See Pennsylvania v. New York, 407 U.S. 206 (1972); Texas v. New Jersey, 379 U.S. 674 (1965). In the present case, Texas was allowed to intervene.

The decision of the Court in this action may determine the right of Massachusetts to claim and take

possession of certain unclaimed intangible personal property. It is, therefore, important that Massachusetts be allowed to intervene and to participate in the discovery process to identify specific property to which it is entitled. Massachusetts' interest is not adequately represented by existing parties because this is not a class action; the parties cannot be expected to protect the interests of Massachusetts; and Massachusetts' absence from this litigation may prejudice its rights to recover the intangible property in question.

The standards for intervention as a matter of right have been satisfied, and Massachusetts should be granted leave to intervene.

II. IN THE ALTERNATIVE, PERMISSIVE INTERVENTION IS APPROPRIATE PURSUANT TO RULE 24(b)(2) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Rule 24(b)(2) of the Federal Rules of Civil Procedure allows the Court discretion to allow permissive intervention where appropriate. The Court should permit Massachusetts to intervene because Massachusetts is a sovereign State with an interest in the outcome of this litigation and has raised issues of law or fact common to those already before the Court. Massachusetts' participation in this case will facilitate the resolution of factual issues and applicable law.

Intervention by Massachusetts will not unduly delay this action or prejudice the rights of the original parties. Moreover, Massachusetts'

intervention will obviate the need for Massachusetts to file a separate action against New York pursuant to a new rule announced by the Supreme Court, thus expediting the ultimate resolution of the entire controversy and promoting judicial economy and efficiency.

Massachusetts has satisfied the standards for permissive intervention and the Court should exercise its discretion to allow Massachusetts to intervene.

CONCLUSION

Massachusetts' Motion for Leave to File Complaint in Intervention should be granted.

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Dated: March 31, 1992

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